

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TERRANCE ALLEN KING,

Plaintiff,

v.

ALLISON, *et al.*,

Defendants.

Case No. 1:23-cv-00681-JLT-BAM (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(ECF No. 27)

Plaintiff Terrance Allen King (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint for Eighth Amendment claims against: (1) Defendant Burns for the painful cuffing and refusal to loosen the cuffs on 1/7/23; (2) Defendants Burns and Mumby for the force used against Plaintiff on 1/7/23 in the rotunda; (3) Defendant Burns for deliberate indifference to medical care on 1/7/23; and (4) Defendants J. Ramirez, G. Sanchez, and C. Patricio for failure to protect on 1/7/23.

Currently before the Court is Plaintiff’s renewed motion for appointment of counsel, filed December 4, 2023. (ECF No. 27.) Defendants have not had the opportunity to file a response, but the Court finds a response unnecessary. The motion is deemed submitted. Local Rule 230(l).

Plaintiff requests appointment of counsel because he has been transferred from CCI Tehachapi, where the events at issue in this action occurred, to High Desert State Prison,

1 approximately 600 miles away. (ECF No. 27.) Plaintiff states that his transfer, in addition to his
2 current placement in punitive segregation, greatly limits his ability to conduct an investigation,
3 interview witnesses, or access the law library. Plaintiff cannot afford to hire an attorney, and the
4 issues in this case will likely involve conflicting testimony and complex issues. (*Id.*)

5 As Plaintiff was previously informed, he does not have a constitutional right to appointed
6 counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev'd in part on*
7 *other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to
8 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Court for the S. Dist.*
9 *of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may
10 request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at
11 1525.

12 Without a reasonable method of securing and compensating counsel, the Court will seek
13 volunteer counsel only in the most serious and exceptional cases. In determining whether
14 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on
15 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
16 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

17 The Court has considered Plaintiff’s request, but does not find the required exceptional
18 circumstances. Even if it is assumed that Plaintiff is not well versed in the law and that he has
19 made serious allegations which, if proved, would entitle him to relief, his case is not exceptional.
20 This Court is faced with similar cases filed by prisoners who are proceeding *pro se* and *in forma*
21 *pauperis* almost daily. Many of these prisoners also have limited access to witnesses and
22 discovery after being transferred to other institutions or placed in administrative or punitive
23 segregation. These litigants also must conduct legal research and litigate their cases without the
24 assistance of counsel.

25 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
26 Plaintiff is likely to succeed on the merits. Although the Court has found that Plaintiff may
27 proceed on cognizable claims, this does not mean that Plaintiff is likely to ultimately succeed on
28 the merits of those claims. Finally, based on a review of the record in this case, the Court does

1 not find that Plaintiff cannot adequately articulate his claims.

2 Accordingly, Plaintiff's renewed motion for appointment of counsel, (ECF No. 27), is
3 HEREBY DENIED, without prejudice.

4 IT IS SO ORDERED.

5 Dated: December 5, 2023

6 /s/ Barbara A. McAuliffe
7 UNITED STATES MAGISTRATE JUDGE

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